IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1153

D. LOUIS ABOOD, *et al.*,

Appellants,

v.

DETROIT BOARD OF EDUCATION, *et al.*,

Appellees.

CHRISTINE WARCZAK, *et al.*,

Appellants,

v.

DETROIT BOARD OF EDUCATION, *et al.*,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MICHIGAN

JURISDICTIONAL STATEMENT

Of Counsel:

KELLER, THOMA, TOPPIN
& SCHWARZE, P.C.
Detroit, Michigan

RAYMOND J. LaJEUNESSE, JR.
Fairfax, Virginia

JOHN L. KILCULLEN
Webster, Kilcullen & Chamberlain
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Attorney for Appellants

February 13, 1976

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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JURISDICTIONAL STATEMENT

Appellants in these two consolidated cases appeal from that part of an opinion and order of the Court of Appeals of Michigan which affirmed a trial court judgment sustaining against federal constitutional chal-

lenge the requirement that Michigan public employees as a condition of employment financially support an exclusive bargaining agent which is permitted by state statute to use nonunion employees' coerced payments for purposes other than nonpolitical collective bargaining. The Supreme Court of Michigan has denied appellants' application for leave to appeal. As the two cases involve identical questions and were considered together by the courts below, a single jurisdictional statement is submitted by appellants in accordance with paragraph 3 of Rule 15 of this Court.

THE OPINIONS BELOW

The opinion of the Circuit Court for Wayne County, Michigan (Appendix[1] A, pp. 7a-10a), is unofficially reported at 84 L.R.R.M. 3008. The opinion of the Michigan Court of Appeals (App. A, pp. 11a-21a) is reported at 60 Mich. App. 92, 230 N.W.2d 322. The orders of the Supreme Court of Michigan denying appellants' application for leave to appeal are set forth in Appendix B, pp. 13b-16b.

An earlier opinion of the Circuit Court (App. A, pp. 1a-6a) is unofficially reported at 73 L.R.R.M. 2237, 61 CCH Lab. Cas. ¶52,225. The order of the Supreme Court of Michigan vacating the summary judgment entered by the Circuit Court in favor of appellees in accordance with that earlier opinion is set forth in Appendix B, pp. 4b-5b.

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[1] Hereinafter "App." All Appendix references herein are to the appendices printed as an attachment to this Statement, *infra*.

The opinions of the Supreme Court of Michigan in a related case pursuant to which the earlier summary judgment herein was vacated are reported at 388 Mich. 531, 202 N.W.2d 305.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) These are proceedings brought by Detroit school teachers and counselors (hereinafter "Appellant Teachers") seeking a declaratory judgment and injunctive relief, pursuant to Michigan General Court Rules 1963, 521 and 718, as to the constitutionality of the compulsory "agency shop" arrangement entered into between the Detroit Board of Education (hereinafter the "Board") and the Detroit Federation of Teachers (hereinafter the "Federation"). Under this arrangement Appellant Teachers are compelled as a condition of employment to either join or pay to the Federation each month a "service fee" equivalent to the membership dues established by the Federation. The complaints alleged, *inter alia*, that this scheme in itself, and the use by the Federation of funds collected through it for purposes other than collective bargaining, deprive Appellant Teachers of rights and freedoms secured by the First and Fourteenth Amendments to the United States Constitution. After one appeal to the Supreme Court of Michigan, on remand the Circuit Court for Wayne County, Michigan, issued an opinion on November 5, 1973 (App. A, pp. 7a-10a), and entered an order on December 5, 1973 (App. B, pp. 6b-8b), granting appellees' motion for summary judgment in both cases, holding that the "agency shop" was authorized by Section 10 of the Michigan Public

Employment Relations Act (hereinafter "PERA"), Mich. Stat. Ann. § 17.455(10) (1974 Cum. Supp.), as amended by Pub. Act 25, Mich. L. 1973, and is valid under the Constitution of the United States. The Circuit Court denied appellants' motion for rehearing on January 24, 1974 (App. B, pp. 9b-10b).

(ii) The judgment or decree sought to be reviewed is the opinion and order entered on March 31, 1975, by the Court of Appeals of Michigan in favor of the validity on its face of Section 10 of the Michigan PERA, as amended by Pub. Act 25, Mich. L. 1973, and denying Appellant Teachers relief as to its validity as applied. (App. A, pp. 11a-21a). Appellants' application for rehearing on the constitutional issue was denied by the Court of Appeals on May 15, 1975 (App. B, pp. 11b-12b). The Supreme Court of Michigan denied their application for leave to appeal by orders entered on September 17, 1975 (App. B, pp. 13b-16b). The Notice of Appeal was filed in the Circuit Court for Wayne County, the court possessed of the record, on November 28, 1975 (App. C, pp. 1c-3c). On December 5, 1975, Honorable Potter Stewart, Associate Justice of this Court, extended appellants' time to docket the appeal in this Court to February 14, 1976.

(iii) Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257(2).

(iv) Cases sustaining the jurisdiction of this Court include:

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 476-87 (1975);

Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 61 n.3 (1963);

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-60 (1954);

People ex rel. McCollum v. Board of Education, 333 U.S. 203, 204-06 (1948);

New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928).

(v) The validity of Section 10 of the Michigan PERA, Mich. Stat. Ann. § 17.455(10) (1974 Cum. Supp.), as amended by Pub. Act 25, Mich. L. 1973, is here involved. The text of that Section as pertinent to this case is:

> (1) It shall be unlawful for a public employer or an officer or agent of a public employer * * * (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization: Provided further, That nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in Sec. 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative * * *.
>
> (2) It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues

uniformly required of members of the exclusive bargaining representative.

The proviso to subsection (1)(c) and subsection (2) were added by Public Act 25 of 1973, signed into law on June 14, 1973.

QUESTIONS PRESENTED BY THE APPEAL

1. Section 10 of the Michigan PERA authorizes agencies of the State to compel public employees to contribute financial support to unions as a condition of public employment. Does this state statute on its face violate the ban in the First Amendment to the Constitution of the United States, made applicable to the states by the Fourteenth Amendment, on laws abridging freedom of association?

2. The Court of Appeals of Michigan held that Section 10 of the Michigan PERA was intended by the Michigan legislature to allow public sector unions to use coerced "service fees" for purposes other than collective bargaining, including political and ideological purposes.

(a) Did Appellant Teachers by their respective complaints make sufficient protests of political and other non-collective bargaining spending by defendant union to have standing to challenge the federal constitutionality, as applied to them, of the statute sanctioning such expenditures?

(b) Regardless of the sufficiency of appellants' protests, does this statute as interpreted by the Michigan Court of Appeals violate by reason of overbreadth the ban in the First Amendment, made applicable to the states by the Fourteenth Amendment, on laws abridging freedom of expression and association?

STATEMENT OF THE CASE

Appellant Teachers in these two consolidated cases are more than 600 Detroit teachers and counselors who brought suit in Wayne County Circuit Court seeking declaratory and injunctive relief as to the constitutionality of the compulsory "agency shop" arrangement entered into in July 1969 between appellee Board and appellee Federation, effective January 26, 1970 (successive agreements have contained substantially the same arrangement). Under this arrangement appellants are compelled as a condition of employment to either join or pay to the Federation each month a "service fee" in the same amount as the union's membership dues.

The complaints alleged, *inter alia*, that this scheme in itself, and in its operation and effect, infringes on Appellant Teachers' freedom of association and other freedoms guaranteed them by the First and Fourteenth Amendments to the United States Constitution. *Abood* Complaint, Count II ¶6(A); *Warczak* Amended Complaint, Prayer for Relief ¶2(A), (C). Each complaint specifically alleged that dues and "service fees" collected by the Federation were used for political and other purposes not collective bargaining in nature of which appellants did not approve. *Abood* Complaint, Count II ¶4; *Warczak* Amended Complaint ¶13.

The *Warczak* case (Mich. Ct. App. Docket No. 19523) was filed on November 9, 1969, and the defendants immediately moved for summary judgment. On January 12, 1970, in opposition to that motion appellants made an offer of proof that the Federation was using sums collected under the "agency shop" scheme for political and other non-collective bargaining

activities to which Appellant Teachers objected.[2] Both sides briefed the question of the First Amendment constitutionality of the "agency shop" arrangement if authorized by the Michigan PERA. Brief of Federation in Support of Motion for Summary Judgment at 39-44a (Mich. Cir. Ct., Dec. 18, 1969); Brief for Plaintiffs on Motion for Summary Judgment at 25-36 (Mich. Cir. Ct., Dec. 18, 1969).

On January 19, 1970, the Circuit Court issued an opinion (App. A, pp. 1a-6a), holding that the "agency shop" was "a condition of employment agreed upon by the contracting employees" and as such authorized by the PERA, that the "agency shop" did not violate freedom of association on its face because it did not require union membership, and that Appellant Teachers' as applied First Amendment claims were premature. The Circuit Court concluded "that the agency shop provision is not repugnant to any statute or constitutional provision" (*id.* at 6a), and on January 23, 1970, entered its order granting summary judgment for failure to state a claim on which relief can be granted (App. B, pp. 1b-3b).

A claim of appeal was filed by Appellant Teachers with the Michigan Court of Appeals.[3] Prior to any

[2]The offer of proof included affidavits of several individual appellants setting forth facts within their personal knowledge, with documentation, respecting the Federation's regular and substantial use of funds for political and social purposes, including the promotion of specific candidates for public office, specific legislation, and other specific public issues, and the affiants' opposition to such expenditures.

[3]The grounds of this appeal included the *per se* and as applied First Amendment unconstitutionality of the PERA if it authorized the "agency shop." Brief in Support of Claim of Appeal at 32-59 (Mich. Ct.App., Jun. 2, 1970).

action by the Court of Appeals, the Federation filed a motion for by-pass appeal to the Michigan Supreme Court. On November 29, 1972, the latter Court held in *Smigel v. Southgate Community School District,* 388 Mich. 531, 202 N.W.2d 305 (1972), that an "agency shop" arrangement which required non-members to pay a "representation fee equivalent to the dues and assessments" of the union "is clearly prohibited by Section 10 of the Public Employment Relations Act, as of necessity either encouraging or discouraging membership in a labor organization." *Id.* at 543, 202 N.W.2d at 308. On December 28, 1972, a Michigan Supreme Court order granted the by-pass appeal in *Warczak,* vacated the summary judgment, and remanded to the Circuit Court for further proceedings consonant with the *Smigel* decision (App. B, pp. 4b-5b).

The *Abood* case (Mich. Ct. App. Docket No. 19465) had been filed in Wayne County Circuit Court on April 23, 1970, and held in suspension pending the outcome of the *Warczak* appeal. Before any further action was taken by the Circuit Court in either case, Section 10 of the PERA was amended on June 14, 1973, by Public Act 25 of 1973 expressly to authorize "agency shop" arrangements requiring public employees to pay "service fees" equivalent in amount to union membership dues. The Federation then moved for summary judgment in both cases on July 5, 1973, for failure to state a claim upon which relief can be granted, on the basis of Public Act 25 and of "the meritorious reasons set forth in this Court's original Summary Judgment for Defendants * * *."[4] Brief in Support of Motion of Defendants

[4]The Circuit Court's original summary judgment order had specifically "ADJUDGED that the said agency shop clause does not contravene the Constitution of the United States * * *." (App. B at 3b).

for Summary Judgment in Their Behalf, On Remand, at 3 (Mich. Cir. Ct., Jul. 5, 1973). In opposing the motion Appellant Teachers contended that the pleadings placed "the basic constitutional issues regarding the validity of an agency shop * * *," not adjudicated in *Smigel*, squarely before the Circuit Court. Memorandum in Opposition to Motion of Defendants for Summary Judgment in Their Behalf at 5 (Mich. Cir. Ct., Jul. 13, 1973).

The Circuit Court issued an opinion on November 5, 1973 (App. A, pp. 7a-10a), and entered an order on December 5, 1973 (App. B, pp. 6b-8b), granting appellees' motion for summary judgment in both cases. The order specifically adjudged that Public Act 25 "authorizes agency shop agreements in public employment * * *" and "that said agency shop clause does not contravene the Constitution of the United States * * *." Appellant Teachers' motions for rehearing reiterating their "position that the agency fee arrangement violates [their] constitutional rights of freedom of association * * * guaranteed by the First * * * and Fourteenth Amendments to the Constitution of the United States * * *", Memorandum Brief at 2 (Mich. Cir. Ct., Dec. 21, 1973), were denied by the Circuit Court on January 24, 1974 (App. B, pp. 9b-10b).

Appellant Teachers filed a claim of appeal with the Michigan Court of Appeals in each case on February 11, 1974. By order of the Court of Appeals dated March 22, 1974, the *Warczak* and *Abood* appeals were consolidated. Appellants' appeal presented the following question, *inter alia*:

C. WHETHER THE AGENCY SHOP CLAUSE CONTAINED IN THE DEFENDANTS' COLLECTIVE BARGAINING AGREEMENT, IMPOSED UNDER COLOR OF SECTION 10 OF THE PUBLIC EMPLOYMENT RELATIONS ACT, VIOLATES PLAINTIFF TEACHERS' RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

Brief in Support of Claim of Appeal at 1 (Mich. Ct. App., Apr. 11, 1974).[5] Appellants argued that question at length, *id.* at 17-59, 66-70; Appellants' Reply Brief (Mich. Ct. App., Jan. 24, 1975), specifically contending that the authorizing statute "is unconstitutional on its face and as applied" on First Amendment grounds, Brief in Support of Claim of Appeal at 45. The appeal requested "an order granting declaratory and injunctive relief declaring the agency shop clause *and Sections 10(1)(c) and (2) of PERA unconstitutional under* both *the Federal* and Michigan *Constitutions****." *Id.* at 80 (emphasis added). Though appellees disputed Appellant Teachers' standing to raise some of the as applied constitutional claims, appellees conceded that the issue of "whether there is any constitutional infirmity in the agency shop clause in question *or in the Act authorizing it*" was *"squarely presented"* by the appeal, Brief of Defendants-Appellees at 5 (Mich. Ct. App., Jul. 19, 1974) (emphasis added), and set forth their rebuttal on that federal constitutional question, *id.* at 5-32.

[5] In the practice of Michigan questions presented on Appeal to the Court of Appeals are raised by a "Statement of Questions Involved" set forth in the appellants' brief. *Mich. Gen. Ct. R.* 1963, 813.

In a per curiam decision issued March 31, 1975, the Michigan Court of Appeals held that the requirement of payment of "service fees" by Appellant Teachers does not violate their First and Fourteenth Amendment rights to freedom of speech and association, and that, though the use of funds collected under a statutorily authorized "agency shop" arrangement for non-collective bargaining purposes could violate appellants' First Amendment rights, they are not entitled to relief on this basis. 60 Mich. App. 92, 230 N.W.2d 322, 325-27 (App. A, pp. 11a, 17a-21a). Appellants' application for rehearing on these constitutional questions was denied by the Court of Appeals on May 15, 1975 (App. B, pp. 11b-12b). In rejecting the appellants' contentions the Court of Appeals applied and enforced to the appellants' disadvantage a state statute which the appellants at all stages had insisted was on its face, and if so applied and enforced, repugnant to the First Amendment, made applicable to the states by the Fourteenth Amendment.

Appellant Teachers' timely application for leave to appeal brought to contest the Court of Appeals' failure to declare Public Act 25 of 1973 and the "agency shop" arrangement violative of the federal Constitution was denied without opinion by the Michigan Supreme Court on September 17, 1975 (App. B, pp. 13b-16b). The identical orders entered in each case stated:

> On order of the Court, the application for leave to appeal by plaintiffs-appellants is considered and the same is hereby DENIED because the appellants have failed to persuade the Court that the questions presented should be reviewed by this Court.

The Michigan Supreme Court having declined to take jurisdiction, the Court of Appeals is the highest court in the State of Michigan in which a decision could be had.

SUBSTANTIALITY OF THE FEDERAL QUESTIONS

The questions presented on this appeal have never been passed upon by this Court. With the recent advent of militant public sector unionism and the passage of state statutes providing for collective bargaining through exclusive representatives in the public sector,[6] the issue of the permissible limits of collective bargaining agreements in public employment relative to the constitutional rights of individual public employees is of great public importance. It is of particular importance to the millions of individual public employees.[7] This appeal squarely raises two substantial questions of the extent to which public employees may be required under state law to support financially an unwanted collective bargaining agent without violating their First Amendment freedoms of speech and association.

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[6] Though the number is in flux, one recent count was that 36 states have enacted laws permitting or requiring public sector collective bargaining. Blair, *Union Security Agreements in Public Employment*, 60 *Cornell L. Rev.* 183, 183-85 & n.8 (1975). At that time 13 states had provisions in their public employment bargaining statutes expressly sanctioning various forms of compulsory unionism. *Id.* at 208 & n.122.

[7] In 1973 there were 11,353,000 state and local government employees. *U.S. Bureau of the Census, Dep't. of Commerce, Statistical Abstract of the United States* 265 (95th ed. 1974).

I.

This Court's Earlier Opinion on Compulsory Unionism in Private Employment Is Irrelevant to Appellants' Claim That the Requirement of Financial Support of a Labor Union as a Condition of Public Employment Violates Their Freedom of Association.

Appellant Teachers alleged and offered to prove that, above and beyond "non-collective bargaining" spending, the requirement of financial support of the "collective bargaining" activities of the appellee union is itself an abridgement of their First and Fourteenth Amendment freedoms. *Abood* Complaint, Count II ¶ 6(A); *Warczak* Amended Complaint, Prayer for Relief ¶ 2(A). Nevertheless, on an otherwise barren record and without any analysis of the serious constitutional claims asserted, the Michigan Court of Appeals cited *Railway Employes' Department v. Hanson*, 351 U.S. 225, 238 (1956), for the proposition that statutes authorizing collective bargaining arrangements which require dissenting employees financially to support unions certified as their exclusive representatives do not in any case on their face abridge First and Fourteenth Amendment liberty. 230 N.W.2d at 326 (App. A at 17a). This is a manifestly incorrect reading of *Hanson* and a failure to appreciate the determinative distinction between public and private employment.

The appellees in *Hanson* attacked a compulsory "union shop" provision negotiated in private industry under color of the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, arguing that the provision abridged their freedoms of speech and association. Because of an inadequate record, however, the "[w]ide-ranged problems * * * tendered under the First Amendment" were not reached. See 351 U.S. at 236-38. Nowhere in the *Hanson* opinions is there even the slightest allusion to the rights of public employees.

In assuming that *Hanson* settled all freedom of association issues here, the Court of Appeals erroneously relied upon the bare conclusory language of that opinion that "the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work * * * does not violate either the First or Fifth Amendments." 351 U.S. at 238, quoted 230 N.W.2d at 326 (App. A at 17a). This language refers, however, to the portion of *Hanson* in which this Court applied the "rational basis" test to the "union shop" in private employment. 351 U.S. at 233-35. Under that test, the Court needed to determine only whether, *under any conceivable (not necessarily probable) circumstances,* coerced financial support of a private sector union engaged in "collective bargaining" *could* coexist with employees' freedom of association. The *Hanson* Court did no more than this. On a bare record, it *assumed* the possible existence of *private* sector unions the activities of which (i) would be limited strictly to a form of *non-political, non-ideological* "collective bargaining" not involving protected association, and (ii) would necessarily "benefit" all employees.[8]

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[8] Thus the statement of the Court that "No more has been attempted here [than to require the beneficiaries of trade unionism to contribute to its costs]. * * * The financial support required relates * * * to the work of the union in the realm of collective bargaining." 351 U.S. at 235; *see* International Association of Machinists v. Street, 367 U.S. 740, 776 (1961) (Douglas, J., concurring).

However, the assumptions adopted in *Hanson* were made in a *private*, not a *public* sector context. In the private sector, it is perhaps conceivable that some unions might not be engaged in political and ideological activism as a necessary and inescapable part of their "collective bargaining" operations. In the public sector, quite the opposite presumption is required. Public sector unions such as the Federation are involved in a "collective bargaining" process inextricably connected to the formulation of governmental policy regarding the provision of public services, budgeting, and taxation – political activity by any reasonable definition of the term. See, *e.g.*, *Winston-Salem/Forsyth County Unit, Educators Association v. Phillips*, 381 F.Supp. 644, 647-48 (M.D.N.C. 1974) (three-judge court); Blair, *supra* note 6, at 194-96; Petro, *Sovereignty and Compulsory Public-Sector Bargaining*, 10 *Wake Forest L. Rev.* 25 (1974); Summers, *Public Employee Bargaining: A Political Persepctive*, 83 *Yale L.J.* 1156, 1197 (1974).

Public sector "collective bargaining" is no different in Michigan. In *Fire Fighters, Local 412 v. City of Dearborn*, 394 Mich. 229, 231 N.W.2d 226 (1975), the Michigan Supreme Court split two-to-two on whether the Michigan law requiring compulsory arbitration of police and fire department labor disputes is an unconstitutional delegation of legislative power. But three of the four justices recognized the inherently political nature of public sector "collective bargaining." Justice Levin states in his opinion, concurred in by Chief Justice Kavanagh:

> The arbitrator/chairman of the panel is entrusted with the authority to decide major questions of public policy concerning the conditions of public employment, the levels and standards of public services and the allocation of public revenues. *Those questions are legislative and political* * * *.[9]

Justice Williams is even more direct in his separate opinion:

> [I]t is impossible to separate public-sector collective bargaining from other aspects of the political process.[10]

Therefore, in uncritically transplanting *Hanson* to a context in which the assumption that union "collective bargaining" might be *non*-political has no rational basis, the Michigan Court of Appeals erred. Because *public* sector "collective bargaining" is *inherently political, all* requirements of financial support of unions imposed on dissenting public employees raise First Amendment freedom of speech and freedom of association issues of the utmost gravity which this Court should determine.

Moreover, in adopting the conclusion of *Hanson* without independent analysis, the Court of Appeals did not apply the tests which this Court has repeatedly said are necessary to justify a governmental intrusion upon fundamental freedoms of *public* employees. As already noted, because of an inadequate record and the assumptions entertained concerning private sector unionism, *Hanson* applied the "rational basis" test. Here, where the sharply defined fundamental rights of public employees are at stake, *Hanson* is irrelevant and a more

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[9] 394 Mich. 229, 231 N.W.2d at 228 (Levin, J.) (emphasis added). The point is explicated at other places in Justice Levin's opinion. 231 N.W.2d at 232, 235, 238-40.

[10] 394 Mich. 229, 231 N.W.2d at 253 (Williams, J.); *see* 231 N.W.2d at 253 & n.3, 264.

stringent test is required by an unbroken line of decisions, all relatively recent, of the courts of the United States, including this Court. It is now clear that public employment may not be denied or terminated for reasons which unconstitutionally impinge upon freedom of association or speech. *Perry v. Sindermann*, 408 U.S. 593, 597-98 (1972), and cases cited therein. And governmental action impinging upon freedom of association or speech is unconstitutional unless it is the least restrictive means necessary to achieve a compelling state interest. *E.g., United States v. O'Brien*, 391 U.S. 367, 376-77 (1968); *N.A.A.C.P. v. Button*, 371 U.S. 415, 433, 438-44 (1963); *Shelton v. Tucker*, 364 U.S. 479, 485-90 (1960) (statute requiring *public teachers* to file as condition of employment annual affidavit reporting all organizational memberships and contributions held to violate freedom of association).

Uniformly basing their decisions upon the teachings of the foregoing cases, the United States Courts of Appeals and District Courts all across the nation have held consistently in recent years that the First Amendment protects the freedom of public employees to associate in labor organizations. *E.g., Lontine v. VanCleave*, 483 F.2d 966 (10th Cir. 1973); *A.F.S.C.M.E. v. Woodward*, 406 F.2d 137 (8th Cir. 1969); *Police Officers' Guild v. Washington*, 369 F.Supp. 543 (D.D.C. 1973) (three-judge court). It goes without saying that the Amendment protects not merely the freedom *to* associate and speak, but also the freedom *not to* do so. *Torcaso v. Watkins*, 367 U.S. 488 (1961); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943); *Illinois State Employees Union v. Lewis*, 473 F.2d 561 (7th Cir. 1972), *cert. denied*, 410 U.S. 928 (1973) (state-imposed condition

that public employees affiliate with particular political party held invalid). And mere financial support of an organization is a protected form of association. *Buckley v. Valeo*, ____U.S.____, 44 U.S.L.W. 4127, 4133-34, 4146 (U.S. Jan. 30, 1976) (No. 75-436); *Shelton v. Tucker*, 364 U.S. at 480-81, 487-88; *Bond v. County of Delaware*, 368 F.Supp. 618, 619-20, 624-27 (E.D. Pa. 1973) (state-imposed condition that public employees contribute to particular political party held invalid).

In short, in positively authorizing state agencies to make payments to unions a condition of public employment, the State of Michigan has clearly infringed Appellant Teachers' freedom of association. The appellees were required to show, and the Michigan courts to find, that the "agency shop" scheme serves a compelling state interest by the least restrictive means necessary.[11] In upholding the validity of Section 10 of the PERA on its face against First Amendment claims without applying the proper test, the Court of Appeals ignored precedents established by this Court which appellants submit require reversal of the decision below.

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[11] Indeed, whether the "agency shop" serves a compelling state interest is a matter of fact, for the appellees to prove at trial. *See* Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539, 551 (1963); Smith v. United States, 502 F.2d 512, 517 (5th Cir. 1974):

> In order for the government to constitutionally remove an employee from government service for exercising [First Amendment rights], it is incumbent upon it to clearly demonstrate that the employee's conduct substantially and materially interferes with the discharge of duties and responsibilities inherent in such employment.

Such a factual record was precluded by the trial court's disposition of these cases on summary judgment.

II.

Because the Michigan "Agency Fee" Statute Sanctions the Use of Nonunion Employees' Coerced Fees for Purposes Other Than Collective Bargaining, It Is Repugnant to the First Amendment Both as Applied to Appellants and on Its Face.

Unlike some public employment labor relations statutes which limit compulsory union "service fees" to the actual costs of negotiations and grievance adjustment,[12] Section 10 of the Michigan PERA explicitly permits "agency fees" equivalent to full union membership dues.[13] The Appellant Teachers contended below that in allowing public sector unions to expend monies above and beyond the demonstrated costs of "collective bargaining", the Michigan legislature has implicitly authorized political spending by these unions. *E.g.*, Brief in Support of Claim of Appeal at 55-59 (Mich. Ct. App., Apr. 11, 1974). Thus these cases raise the important question reserved in *International Association of Machinists v. Street*, 367 U.S. 740 (1961), as to the constitutionality of a legislative grant of authority to unions to compel ideological conformity among employees by levying political "taxes" upon them

The Michigan Court of Appeals dealt at length with this question. Specifically noting that the political activities of labor organizations are well-recognized, and

[12] *E.g., Minn. Stat. Ann.* § 179.65[2].

[13] *See* test of § 10, *supra* p. 5-6. Several other state statutes are similar to Michigan's. *See* Blair, *supra* note 6, at 208-09 & nn.123-24.

that it is reasonable to assume that a portion of every union's budget goes to such activities as the support of candidates for public office and lobbying for the passage of legislation,[14] the Court concluded that, since the Michigan statute "does not limit the nonmember's contribution to his proportionate share of the costs of collective bargaining, it * * * sanctions the use of nonunion members' fees for purposes other than collective bargaining." 230 N.W.2d at 326 (App. A at 18a).[15]

The Court below then recalled that in *Street* constitutional questions had been avoided through construction of the Railway Labor Act's "union shop" provision, 45 U.S.C. § 152, Eleventh, so as to deny the railway unions the authority to use a dissenting employee's dues and fees for political purposes. Contrasting the statutory provision involved in *Street* with the Michigan public employee "agency shop" statute, the Court of Appeals recognized that, because no such limiting construction is admissible as to the Michigan law,[16] it had to decide the constitutional

[14] *Accord*, Smigel, 388 Mich. at 543, 202 N.W.2d at 308.

[15] Though the Court of Appeals did not advert to it, the legislative history of 1973 Pub. Act. 25 supports this conclusion. *See* Brief in Support of Claim of Appeal, *supra*, at 55-59.

[16] The Michigan Court of Appeals is a court of state-wide appellate jurisdiction, the decisions of which "are final except as reviewed by the Michigan Supreme Court on leave granted by the Supreme Court." *Mich. Gen. Ct. R.* 1963, 800. Its construction of a Michigan statute is binding on the federal courts. *See* Coleman v. Alabama, 399 U.S. 1, 9 (1970); Albertson v. Millard, 345 U.S. 242, 244 (1953); Fidelity Union Trust Co. v. Field, 311 U.S. 169 (1940).

question. *Id.* (App. A at 18a-19a). And, pursuing the merits of that issue, it held that "the agency shop clause, [as authorized by the statute] *could* violate plaintiffs' First and Fourteenth Amendment rights." *Id.* at 327 (App. A at 19a) (emphasis added). But the Court proceeded to rule that Appellant Teachers were not entitled to relief because they had failed to allege that any of them had specifically protested the expenditure of their funds for political purposes. *Id.* (App. A at 21a). This ruling is erroneous for two reasons.

a. Under This Court's Precedents Appellants Made Sufficient Protests to Challenge the Constitutionality of the "Agency Fee" Statute as Applied to Them.

As a matter of law, Appellant Teachers did make sufficient protests. The protest rule was first enunciated by this Court in *Street*, 367 U.S. at 774. The correct reading of that rule was later explained fully in *Brotherhood of Railway Clerks v. Allen*, 373 U.S. 113, 119 n.6 (1963):

> [Plaintiffs] first made known their objection to the [unions'] political expenditures in their complaint filed in this action; however, this was early enough. Street, 367 U.S., at 771.[17]

That is, in *Street* as in *Allen* this Court clearly held that a protest against political expenditures of compelled

[17] "The appellees who have participated in this action have *in the course of it* made known to their respective unions their objection to the use of their money for the support of political causes." 367 U.S. at 771 (emphasis added).

dues and fees is timely and sufficient if made in a plaintiff's complaint, as it was here. *Abood* Complaint, Count II ¶4; *Warczak* Amended Complaint ¶13. The complaint is the protest for *Street-Allen* purposes.

Secondly, as *Allen*, 373 U.S. at 118, makes clear, the allegation that coerced fees

> "have been and are and will be regularly and continually used by the defendant Unions to carry on, finance and pay for political activities directly at cross-purposes with the free will and choice of the plaintiffs" * * * sufficiently states a cause of action. It would be impracticable to require a dissenting employee to allege and prove each distinct union political expenditure to which he objects; it is enough that he manifests his opposition to *any* political expenditures by the union.

The Michigan Court's theory that, in order to preserve First Amendment freedoms of speech and association, "the employee must make known to the union those causes and candidates to which he objects," 230 N.W.2d at 327 (App. A at 21a), is contrary to the unequivocal rule laid down in *Allen*.[18]

[18] Lathrop v. Donohue, 367 U.S. 820 (1961), supports this interpretation of the *Street-Allen* rule. In *Lathrop* the majority of this Court found the constitutional issues ripe for decision despite the fact that the plaintiff did not specify those political activities of the integrated bar to which he objected. 367 U.S. at 849 (Harlan & Frankfurter, JJ., concurring); *id.* at 865 (Whittaker, J., concurring); *id.* at 866 (Black, J., dissenting); *id.* at 878 (Douglas, J., dissenting). The constitutional issues were not decided only because this majority did not agree on the result. *See id.* at 865-66 (Black, J., dissenting). Only Justice Brennan's plurality opinion found that the entire record in the case did not present the constitutional issues in concrete enough form. *Id.* at 844-48.

Since the Appellant Teachers' complaints completely fulfilled the pleading requirements of *Street* and *Allen*,[19] constituting a sufficient protest, the Court of Appeals' determination that constitutional rights "could" be, but had not been, violated is wrong. That Court held that only the absence of an effective protest defeated appellants' claims under the First and Fourteenth Amendments. *Id.* (App. A at 19a-21a). When the premise falls, so does the conclusion. Having made effective protests through their complaints, Appellant Teachers were entitled to full relief on their constitutional claims.

b. Under This Court's Precedents the "Agency Fee" Statute Is Facially Overbroad.

Even if Appellant Teachers' complaints had *not* been an effective protest, the Michigan Court of Appeals' denial of protection against compulsory financial support of union political activities would nevertheless be erroneous -- because the Michigan "agency shop"

[19] *Warczak* Amended Complaint ¶13 specifically alleges that the Federation and its affiliated labor organizations

> are engaged, in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature *of which plaintiffs do not approve*, and in which they will have no voice, and which are not and will not be collective bargaining activities * * *, and that a substantial part of the sums required to be paid under said Agency Shop Clause are used and will continue to be used for the support of such activities and programs * * *. (Emphasis added).

Abood Complaint, Count II ¶4 sets forth identical averments.

scheme is on its face repugnant to the First and Fourteenth Amendments on *overbreadth* grounds. The protest requirement, after all, arose in *Street* and *Allen* in the context of litigation under a private sector statute which this Court specifically construed so as not to permit the expenditure of dissenters' coerced dues and fees for political and ideological purposes. *Street*, 367 U.S. at 768-70. Here, *per contra*, the appellants challenged a public sector statute which the Court of Appeals found "admits of no such construction" as was employed in *Street*. 230 N.W.2d at 326 (App. A at 18a-19a).

This Court's overbreadth doctrine was summarized, in a public employment context, in *Muller v. Conlisk*, 429 F.2d 901, 903 (7th Cir. 1970) (citations omitted) (emphasis added):

> [Where p]laintiff is a member of a group at which [a challenged law] is directed and, as such, his right to speak is presently subject to curtailment by [the law, t]his is sufficient to establish his standing to challenge the rule *quite apart from any specific sanction which has been imposed upon him for its violation.* * * *
>
> * * * * The Supreme Court has repeatedly recognized that because "freedoms of expression in general * * * are vulnerable to gravely damaging yet barely visible encroachments," * * * *the mere threat of the imposition of sanctions is sufficient present infringement to justify redress.*[20]

That is, an individual who *may* be injured by an unconstitutional application of an overbroad statute

[20] *Citing* Dombrowski v. Pfister, 380 U.S. 479, 486-87 (1965); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 66 (1963); N.A.A.C.P. v. Button, 371 U.S. 415, 432-33 (1963); Soglin v. Kauffman, 418 F.2d 163, 166 (7th Cir. 1969).

may complain of the rule itself, *even though he has yet to suffer injury*. The mere possibility that the statute may be unconstitutionally applied against him is enough. As this Court said in *Button*, 371 U.S. at 432 (emphasis added):

> we will not presume that the statute curtails constitutionally protected activity as little as possible. * * * [T]he instant decree may be invalid if it prohibits privileged exercises of First Amendment rights whether or not the record discloses that the petitioner has engaged in privileged conduct. *For in appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible application of the statute in other factual contexts besides that at bar.*

Therefore, a specific protest by Appellant Teachers is unnecessary here. Because the Michigan "agency shop" scheme is overbroad on its face, the Court of Appeals need have considered no more than the possibility that the statute *could* be used to enforce political and ideological conformity upon any public employee, and should have invalidated the statute on that ground. Indeed, the Michigan Court specifically held that "the agency shop clause * * * *could* violate plaintiffs' First and Fourteenth Amendment rights." 230 N.W.2d at 327 (App. A at 19a) (emphasis added). That determination mandates a finding that the statute is unconstitutional.

The overbreadth doctrine is based upon the premise that statutes potentially impinging upon the exercise of fundamental freedoms must be narrowly and specifically drawn. As this Court said in *Shelton v. Tucker*, 364 U.S. 479, 488 (1960) (footnote omitted) (emphasis added):

> even though the governmental purpose be legitimate and substantial, *that purpose cannot be pursued by means that broadly stifle fundamental liberties when the end can be more narrowly achieved.* The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.

That is, a statute which on its face threatens to impinge upon First Amendment freedoms is unconstitutional unless it is the *least* restrictive means necessary to achieve a *compelling* governmental interest. See, *e.g.*, *Sherbert v. Verner*, 374 U.S. 398, 406-08 (1963).

The Court of Appeals here, however, has determined that the Michigan "agency shop" statute is *not* the least restrictive means available to promote the goal of "labor stability" advanced in support of the PERA. A less restrictive means, the Court recognized, would have been to "limit the nonmember's ['service fee'] contribution to his proportionate share of the costs of collective bargaining * * *." 230 N.W.2d at 326 (App. A at 19a). Since the "agency fee" scheme "sanctions the use of nonmembers' fees for purposes other than collective bargaining," *id.*, it is necessarily an *un*selective and *im*precise means to achieve the legislative purpose – and therefore should be held repugnant to the First Amendment under this Court's precedents.

CONCLUSION

This is a case of far-reaching effect and fundamental importance. The Michigan Court of Appeals recognized that the "agency shop" scheme, adopted in a number

of states, seriously threatens basic freedoms of public employees:

> [F]reedom of expression is a constitutional right so basic to our form of government that it must be jealously guarded. This is particularly true where, as here, employees are compelled by the government to support the collective bargaining activities of an organization which they prefer not to join.

Id. Freedom of association is no less basic. See *Shelton v. Tucker*, 364 U.S. at 486. Nonetheless, the Michigan Court, purportedly following decisions of this Court, has held that the First Amendment does not prohibit the statutory requirement that public employees either suffer discharge from their employment or involuntarily subsidize private organizations which are *both* organizations which are *both* inherently political *and* permitted by state law to use coerced payments for extraneous political and ideological purposes.

This Court has never decided that the First Amendment is not violated when a state statute coerces public employees into political and ideological conformity, whatever the purpose. This question should now be determined, especially since the harm done is irreparable. For political and ideological viewpoints once promulgated, and political influence once applied, cannot be withdrawn from the marketplace of ideas, the voting booth, or the legislative chamber. See *Cort v. Ash*, ____U.S.____, 95 S.Ct. 2080, 2091 (1975). With fundamental rights at stake, the substantial questions

presented by these cases should not be determined without briefs and oral arguments.

Respectfully submitted,

JOHN L. KILCULLEN
Webster, Kilcullen & Chamberlain
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Attorney for Appellants

Of Counsel:

KELLER, THOMA, TOPPIN & SCHWARZE, P.C.
Detroit, Michigan

RAYMOND J. LaJEUNESSE, JR.
Fairfax, Virginia

February 13, 1976

APPENDIX A

**Opinion of the Circuit Court
for the
County of Wayne, Michigan,
dated January 19, 1970**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al.,

Plaintiffs,

vs. Civil Action No. 145080

THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, a statutory body corporate; DETROIT FEDERATION OF TEACHERS; MARY ELLEN RIORDAN; JOHN ELLIOTT; et al.,

Defendants.

OPINION

This matter comes before this Court on defendants' (Detroit Federation of Teachers and Detroit Board of Education) Motion for Summary Judgment under Michigan General Court Rule 117, predicated on the claim that plaintiffs have failed to state a cause of action. Specifically the plaintiffs claim that they are entitled to declaratory relief to determine the validity of the agency shop clause in the collective bargaining agreement between the defendant Detroit Board of

Education and defendant Detroit Federation of Teachers.

Plaintiffs filed this suit as a class action on behalf of themselves and others in a similar situation who are also school teachers who object to the requirement that they authorize deduction of service fees equal to the regular union dues or be terminated from employment. It appears that defendant Detroit Federation of Teachers has been certified as the exclusive bargaining representative of all teachers in the Detroit School System by virtue of the application of the procedures set forth in the Public Employment Relations Act.

The complaint filed by plaintiffs contends that the agency shop clause as it appears in the collective bargaining agreement is invalid as to these plaintiffs and all others in the same class for the following reasons:

1. This provision violates the constitutional guarantees of freedom of association and right to privacy.
2. It denies plaintiffs due process and equal protection as required by both State and Federal Constitutions.
3. Use of collected monies for purposes other than that germane to the contract itself is illegal as to them.
4. The clause is contrary to state statutes; namely, the Public Employment Relations Act, Michigan Teachers Tenure Act, Section 353, Chapter LI, Penal Code (MSA 28.585), and the Michigan General School Laws.

In regard to the question of freedom of association and right to privacy, it should be noted that the provision for an agency shop does not require plaintiffs or any of them to become members or join the defendant union. It does require that all persons

covered by the contract contribute an equal sum to the union designated as the bargaining agent for all the employees.

Plaintiffs contend that the provision in the collective bargaining agreement deprives them of certain guarantees under the due process clause. Nowhere can this Court find any arbitrary or discriminatory provisions in the principle of the agency shop clause. No employee will be prejudiced in or be deprived of his employment without the safeguards of due process. The contract itself provides for the following of the dismissal procedure of the Michigan Tenure Act which requires notices, hearing, representation, confrontation and a written record. On the issue as to whether the plaintiffs are being denied equal protection as guaranteed by the constitution, it does not appear that any employee in the bargaining unit is being in any manner discriminated against whether or not he is a union member. Each employee has all the rights and privileges of a member and all the protections and benefits guaranteed to members. He pays no more (or less) than a member for the services rendered to him.

Plaintiffs' contention that the use of the monies collected for purposes other than that germane to the bargaining and administration of the contract would be illegal as to them is a somewhat novel issue. It does not appear to have had much consideration by courts. One case touching upon it is *I.A.M. v. Street*, 367 U.S. 740, where, as a matter of statutory construction, the court held that the monies could not be used for certain purposes, but even in this case the Supreme Court held an injunction to restrain the collection was not to be permitted. To the same effect is the case of *Railroad*

Clerks v. Allen, 373 U.S. 113, wherein the case was returned to the trial court to determine the proportion of the dues used for improper purposes.

In the instant proceeding it does not appear that this is really an issue at this juncture. The matter before this Court is for declaratory relief from the enforcement of the particular clause. No money has been used for any purposes as yet, the authority appears to be that a restraining of the collection is not the proper remedy and in this context there may be an issue to be resolved in a proper proceeding as to what expenditure of the funds is proper. Perhaps in a suitable proceeding it may be decided that any expenditure in furtherance of legitimate union purposes may be permissible.

Finally, it is necessary to determine whether the agency shop clause in the agreement is contrary to or prohibited by any state statute. First, plaintiffs call this Court's attention to the Michigan Tenure Act which provides for discharge or demotion of a tenure teacher only for reasonable and just cause. Can this be reconciled with the agency shop clause which requires the dismissal of a teacher for failure to pay the service fee equivalent to the regular union dues? A reading of the contract will reveal that the constitutional safeguards of procedural due process as required by the Michigan Tenure Act be followed. If not against public policy and repugnant to any basic rights of individuals, it is most conceivable that this violation of the collective bargaining contract may justify discharge. The cases are myriad in holding that where the agency shop clause is violated an employee's discharge for violation of the clause was reasonable.

Secondly, plaintiffs call this Court's attention to the P.E.R.A. itself and contend that the agency shop clause is prohibited in that it is not specifically authorized. A comparison of P.E.R.A. with M.L.M.A. indicates that M.L.M.A. specifically authorizes it, P.E.R.A. is silent and therefore plaintiffs would contend that it is an indication that the legislature intended to provide for no form of union security in public employment contracts. This Court would conclude the contrary. P.E.R.A. authorizes contracts between employees and their public employers to cover conditions of employment. The agency shop is apparently a condition of employment agreed upon by the contracting parties and where not violative of any individual rights will be sustained. As to the issue whether this clause encourages or discourages membership in a union, this Court would conclude that the clause does not violate this provision of P.E.R.A. Nothing encompassed in the agency shop clause encourages anyone to do any more than contribute to the organization selected by a majority of the group to represent it. This contribution merely spreads among all the beneficiaries the cost of representation.

Third, plaintiffs contend that the provision here in question is violative of Section 353, Chapter LI, of the Michigan Penal Code, being MSA 28.585. This statute appears to this Court to be directed against unilateral acts by employers to relieve employees from arbitrary or capricious demands on the part of the employer. The agency shop clause in a collective bargaining agreement is not such a provision as would come within the purview of the criminal statute.

Fourth, the issue is raised whether this provision is contrary to or prohibited by the Michigan General School Laws. True it is that school boards derive their powers from the school laws and such other laws as may be applicable. It is urged that since the School Code does not authorize an agency shop agreement, the Board has ho power to enter into one. This Court would hold that these statutes must be read in conjunction with P.E.R.A. Whether P.E.R.A. would invalidate such a provision has been dealt with supra. On this issue it would be indeed a narrow construction of the school laws to hold that nothing not specifically authorized therein is prohibited. Such a holding would be contrary to *Holland School District v. Holland Education Association*, 380 Mich. 314, and *Garden City School District Labor Mediation Board*, 358 Mich. 258.

From the foregoing it is patent that this Court would conclude that the agency shop provision is not repugnant to any statute or constitutional provision. Therefore, a Summary Judgment as prayed for by defendants will be granted. An appropriate Judgment in accordance with this Opinion may be presented.

/s/Charles Kaufman
Circuit Judge

Dated: January 19, 1970
Detroit, Michigan

A true Copy
EDGAR M. BRANIGIN
Clerk

Opinion of the Circuit Court for the County of Wayne, Michigan, dated November 5, 1973

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al.,

Plaintiffs,

-vs- No. 145 080

THE BOARD OF EDUCATION OF THE CITY OF DETROIT, DETROIT FEDERATION OF TEACHERS, et al.,

Defendants.

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al.,

Plaintiffs,

-vs- No. 155 255

DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al.,

Defendants.

OPINION RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION TO SUSPEND DUES DEDUCTIONS.

These matters come before this Court on the plaintiffs' motion to suspend dues deductions and defendant's motion for summary judgment. Both these matters eventuate as a result of the Michigan State Supreme Court's decision in the case of Smigel v Southgate School District, 388 Mich 531. It appears that this aforementioned case had issues before the Supreme Court identical to the issues which this Court originally decided in the instant matters before this Court now.

It would appear that there is really only one issue before this Court at this time which will be dispositive of the entire controversy. That one issue is whether or not the Legislative Enactment 1973 PA 25 should be given retrospective effect or whether it should act only prospectively.

It appears that in the Smigel decision our Supreme Court in determinig that the Public Employment Relations Act did not specifically provide for an agency shop, held that the agreement providing for same was contrary to the statute. If we look only to the words of the legislature in determining the legislative intent we find that the original act is silent as to an authorization for an agency shop. However, in looking at the amendment of the Public Employment Relations Act added by 1973 PA 25 there are clear and unequivocal words of intent of the legislature which indicate that the purpose of the amendatory act is to *reaffirm the continuing public policy of this state* that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to it a service fee which may be equivalent to

the amount of dues required by members. It would appear to this Court that in setting forth a public policy not only prospectively but also indicating it has always been the public policy of this state to make such a provision, that the legislature is indicating that while the Supreme Court may have correctly read the statute, as originally promulgated, the legislature is now making clear what it meant so that the effect of the Supreme Court's decision may be nullified. It should be noted here that it is the legislature which determines the public policy of a state and not a court.

This Court is at a loss to find any vested rights in the previous statute or in the decision of the Supreme Court redounding to the plaintiffs' benefit which would constitute a deprivation of any of their constitutional rights to have it now removed by the legislature. The defendants cite in their brief numerous instances where legislation may be retrospective. It will be unncessary in this opinion to restate those cases or the points of law for which they stand.

This Court would hold that since the legislature specifically and validly indicated that it is reaffirming the continuing public policy of this State and inasmuch as this is an amendatory act, this Court would hold not only that the legislature intended retrospective application but that under all the circumstances pertaining to the matters now before the Court this is the only construction which squares with reality.

A judgment in accordance with this opinion may be presented.

/s/Charles Kaufman
CHARLES KAUFMAN
Circuit Judge

November 5, 1973

A True Copy
Joseph B. Sullivan
Clerk

Opinion and Order of the Court of Appeals of the State of Michigan

STATE OF MICHIGAN
COURT OF APPEALS
DIVISION 1

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al.,
Plaintiffs-Appellants,
v
DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al.,
Defendants-Appellees.

Docket #19465

CHRISTINE WARCZAK, et al.,
Plaintiffs-Appellants,
v
DETROIT BOARD OF EDUCATION, et al.,
Defendants-Appellees.

Docket #19523

BEFORE: McGregor, P.J., and J.H. Gillis and Quinn, J.J.

PER CURIAM

Plaintiffs Christine Warczak and others, all Detroit teachers, filed a complaint for declaratory judgment on November 7, 1969, challenging the constitutional and statutory validity of the agency shop provision in the collective bargaining agreement between the Detroit Board of Education and the Detroit Federation of

Teachers. Plaintiffs filed the cause of action on behalf of themselves and all others similarly situated. Named as defendants were the Detroit Board of Education, the Detroit Federation of Teachers and all teachers who are members of the Federation.

Defendants moved for summary judgment, which was granted on January 19, 1970 by the trial court. Plaintiffs appealed the grant of the summary judgment. The Michigan Supreme Court granted plaintiffs leave to appeal and set aside the summary judgment entered in favor of defendants, based on the decision in *Smigel* v *Southgate School District*, 388 Mich 531; 202 NW2d 305 (1972). The case was remanded to the circuit court "for further proceedings consonant herewith."

Thereafter, in the trial court, plaintiffs filed a motion for suspension of dues deduction authorizations. The defendants, on the other hand, filed a motion for summary judgment based on the then recent amendment to the Public Employment Relations Act authorizing agency shop provisions in collective bargaining agreements between public employers and public employees. MCLA 423.210: MSA 17.455(10).

The trial court granted defendants' motion for summary judgment and denied plaintiffs' motion to suspend dues deductions. In its opinion, the trial court stated that the amendment should be given retroactive effect. Plaintiffs appealed. On March 25, 1974, the Court of Appeals, on its own motion, entered an order consolidating this appeal with another pending appeal, *Abood et al* v *Detroit Board of Education, et al.*

In the *Abood* case, the complaint is essentially the same as that filed in the *Warczak* case, except that the named plaintiffs are more numerous and do not claim to represent any others than themselves. They also

allege that they have been threatened with dismissal and are requesting injunctive relief to restrain the enforcement of the agency shop clause. A motion for summary judgment was granted in favor of defendants in that case and plaintiffs appealed.

I

Should MCLA 423.210; MSA 17.455(10), effective June 14, 1973 and authorizing agency shop provisions in public employment contracts, be given retroactive effect so as to validate the agency shop provision in the contract entered into between the Detroit Federation of Teachers and the Detroit Board of Education?

In the *Smigel* case, *supra*, the Supreme Court of Michigan found that an agency shop provision in a contract between the Southgate Education Association and the Southgate Community School District was prohibited by §10 of the Public Employments Relations Act [PERA].

Justice T. M. Kavanagh pointed out in his opinion that there was a significant distinction in Michigan's labor law between public and private employees.

> "Though MCLA 423.16; MSA 17.454(17) is nearly identical to MCLA 423.210; MSA 17.455(10) in respect to the requirement of employer neutrality, the statute regarding private

employment includes one very important provision which is not found in the public employment relations act. MCLA 423.14; MSA 17.454(15) constitutes an authorization of union security clauses whether in the form of 'closed shop', 'union shop' or 'agency shop.'" 388 Mich at 539-540; 202 NW2d at 306.

Since such an authorization was not included by the Legislature in the PERA, the Supreme Court concluded that the agency shop provision in Smigel was prohibited by the PERA.

This was the state of the law when the Abood and Warczak cases were remanded to the circuit court. Subsequently, however, the Legislature amended the PERA to provide:

"That nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative." MCLA 423.210; MSA 17.455 (10).

In the same section, the Legislature gave some indication of its intent in enacting the amendment.

"(2) It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their

exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative. MCLA 423.210; MSA 17.455(10).

In ruling that the amendment in question should be given retroactive application, the trial court stated that, by clear and unequivocal words of intent, the Legislature indicated its desire that the amendment be given such retroactive application. We respectfully disagree.

The most often-quoted statement of the law concerning retroactivity is found in *Detroit Trust Co.* v *Detroit*, 269 Mich 81, 84; 256 NW 811, 812-813 (1934):

"We think it is settled as a general rule in this State, as well as in other jurisdictions, that all statutes are prospective in their operation excepting in such cases as the contrary clearly appears from the context of the statute itself.

" 'Indeed, the rule to be derived from the comparison of a vast number of judicial utterances upon this subject, seems to be, that, even in the absence of constitutional obstacles to retroaction, a construction giving to a statute a prospective operation is always to be preferred, unless a purpose to give it a retrospective force is expressed by clear and positive command, or to be inferred by necessary, unequivocal and unavoidable implication from the words of the statute taken by

themselves and in connection with the subject matter, and the occasion of the enactment, admitting of no reasonable doubt, but precluding all question as to such intention." ' Endlich, Interpretation of Statutes, §271." See also, *In re Davis' Estate*, 330 Mich 647, 650-651; 48 NW2d 151 (1951); *Briggs* v *Campbell, Wyant & Cannon*, 379 Mich 160, 164-165; 150 NW2d 752 (1967); *Olkowski* v *Aetna Casualty*, 53 Mich App 497, 503; 220 NW2d 97 (1974).

Considering "the occasion of the enactment" of the amendment, one might conclude that it should be given retroactive effect. However, as noted in *Detroit Trust Co, supra,* that is only one element. While that element may favor retroactivity, it is still necessary to consider the language of the amendment itself and to determine the Legislature's intention.

The amendment in question states that its purpose is to "reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require * * * that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative."

The Legislature's use of the word "reaffirm" seems to indicate that it was their feeling that such was always the policy of this State. However, *Smigel* held to the contrary. That the Legislature felt that it had always been the public policy of this State to permit agency shop clauses in the public sector, and that it said so in the amendment, is not enough to overcome the presumption favoring prospective application of the amendment.

Therefore, it is our conclusion that the trial court erred in giving retroactive application to the amendment.

II

Does the agency shop clause violate plaintiffs' First and Fourteenth Amendment rights securing freedom of speech and freedom of association?

In *Railway Employes' Department* v *Hanson*, 351 US 225, 238; 76 S Ct 714, 721; 100 L Ed 1112, 1134 (1956), the Supreme Court considered the question whether a union shop agreement forces workers into idealogical and political associations which violate their right to freedom of conscience, freedom of association, and freedom of thought protected by the Bill of Rights.

The Court held that "the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work * * * does not violate either the First or Fifth Amendments." See also *Buckley* v *American Federation of Television & Radio Artists*, 496 F2d 305, 313 (1974).

However, the Court did not consider whether or not funds collected pursuant to an agency shop clause could constitutionally be used for purposes unrelated to collective bargaining. That issue was not presented in *Hanson*, but it is squarely before us in the case at bar.

MCLA 423.210; MSA 17.455(10) provides for "a service fee which may be equivalent to the amount of

dues uniformly required of members of the exclusive bargaining representative."

The political activities of labor unions are well-recognized. It is reasonable to assume that at least a portion of every union's budget goes to activities that could be termed political, e.g., support of candidates sympathetic to the union cause and lobbying for the passage of bills in the legislature. Since the amendment to MCLA 423.210; MSA 17.455(10) does not limit the nonmember's contribution to his proportionate share of the costs of collective bargaining, it is clear that the amendment sanctions the use of nonunion members' fees for purposes other than collective bargaining.

In *International Association of Machinists* v *Street*, 367 US 740; 81 S Ct 1784; 6 L Ed 2d 1141 (1964), the United States Supreme Court faced a situation that is nearly on all fours with the case at bar. *Street* involved the same provision of the Railway Labor Act which was considered in *Hanson, supra*. But in *Street* six employees brought action, on behalf of themselves and of employees similarly situated, alleging that the money each was thus compelled to pay to hold his job was in substantial part used to finance the campaigns of candidates for federal and state offices whom he opposed, and to promote the propagation of political and economic doctrines, concepts and idealogies with which he disagreed.

The Supreme Court did not pass directly on the constitutional issues, instead construing the statute to deny railroad unions the right, over the employee's objection, to use his money to support political causes which he opposes. Since the statute under consideration

here admits of no such construction, the constitutional issue requires decision.

We have before us then, two powerful countervailing public policies. We are asked, on the one hand, to preserve freedom of expression, and, on the other, to promote labor stability. But freedom of expression is a constitutional right so basic to our form of government that it must be jealously guarded. This is particularly true where, as here, employees are compelled by the government to support the collective bargaining activities of an organization which they prefer not to join. Justice Douglas expressed this concern well in his concurring opinion in *Street*:

> "If an association is compelled, the individual should not be forced to surrender any matters of conscience, belief or expression. He should be allowed to enter the group with his own flag flying, whether it be religious, political or philosophical; nothing that the group does should deprive him of the privilege of preserving and expressing his agreement, disagreement, or dissent, whether it coincides with the view of the group, or conflicts with it in minor or major ways; and he should not be required to finance the promotion of causes with which he disagrees." 367 US at 776; 81 S Ct at 1804; 6 L Ed 2d at 1165.

Therefore, we conclude that the agency shop clause, as prospectively authorized by the amendment to MCLA 423.210; MSA 17.455(10) could violate plaintiffs' First and Fourteenth Amendment rights.

First, however, it should be noted that this is not a true class action. As the Supreme Court pointed out in *Street, supra*:

> "Any remedies, however, would properly be granted only to employees who have made known to the union officials that they do not desire their funds to be used for political causes to which they object * * *. From these considerations, it follows that the present action is not a true class action, for there is no attempt to prove the existence of a class of workers who had specifically objected to the exaction of dues for political purposes." 367 US at 774; 81 S Ct at 1803; 6 L Ed 2d at 1164.

Thus it is that whatever relief is fashioned can only be applied to those Detroit teachers who have specifically protested the use of their funds for political purposes to which they object.

Further, the Supreme Court made it clear in *Street* that injunctive relief is not the proper remedy:

> "Restraining the collection of all funds from the appellees sweeps too broadly, since their objection is only to the uses to which some of their money is put. Moreover, restraining collection of the funds as the Georgia courts have done might well interfere with the appellant unions' performance of those functions and duties which the Railway Labor Act places upon them to attain its goal of stability in the industry." 367 US at 771; 81 S Ct at 1801; 6 L Ed 2d at 1162.

The Court suggested two possible remedies. 367 US at 774-775; 81 S Ct at 1803; 6 L Ed 2d at 1164-1165. The first is an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the total union budget.

The second method would be restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he was opposed. This is the method we prefer since, in each instance, the drawing up of a financial statement will be required to determine the proportion of union funds used for a particular purpose, and this method will least interfere with unions carrying out their daily functions.

To reiterate briefly, employees who are forced to contribute service fees to a collective bargaining representative may not be deprived of First Amendment freedom of expression. But, in order to preserve this right, the employee must make known to the union those causes and candidates to which he objects. The remedy then would be restitution to the employee of that portion of his money expended by the union over his objection.

In the case at bar the plaintiffs made no allegation that any of them specifically protested the expenditure of their funds for political purposes to which they object. Therefore the plaintiffs are not entitled to relief on this basis.

The judgment of the lower court must be reversed, however, as to the retroactive application given to MCLA 423.210; MSA 17.455(10).

Reversed and remanded. No costs, a public question being involved.

APPENDIX B

Summary Judgment of the Circuit Court for the County of Wayne, Michigan, dated January 23, 1970

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, et al.,
Plaintiffs, No. 145080

-vs-

DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, MARY ELLEN RIORDAN, JOHN ELLIOTT, MARILYN KLEIN, EDWARD VANDERLAAN, JOHN DOE and JANE DOE, as Teachers and Employees of Detroit Board of Education and Members of Detroit Federation of Teachers,
Defendants.

SUMMARY JUDGMENT FOR DEFENDANTS

At a session of said Court held in the City-County Building in the City of Detriot, Michigan on January 23, 1970

PRESENT: HONORABLE CHARLES KAUFMAN, CIRCUIT JUDGE.

This matter having come on to be heard upon the motion of defendants for summary judgment in their

behalf pursuant to GCR 1963, 117.2(1), for the reason that plaintiffs Christine Warczak, Ernest C. Smith, Judith Kennedy, Bessie Petrone, LeRoy Rowley, Gerald Golden, Yolanda Bone, Christine Nelson, Douglas L. Roeseler, Diana M. Klawitter, Brenda C. Jett, Richard R. Quick, James E. Davis, Leola R. Carter, Ethel B. Beckwith, Richard J. Hendin, Arthur Schneider, El Vera Gustafson, Harold C. Cook, Joseph A. Poniatowski, Donald Ashby, Charles A. Benson, Edward Anthony, Lillian Smith, Sara J. Cameron, Katherine A. Morrissey, Noreene Leavell, Charles Kane, Margaret Quinn, Cataldo Casiecci, James L. Brennan, Marjorie N. Boone, Marjorie H. Harrison, Sally K. Harrison, Cora McMillan, Dennis G. Kelly, and George W. Carter have failed to state a claim upon which relief can be granted, and defendant Detroit Federation of Teachers and individual defendants, by their counsel, and parties plaintiff and added parties plaintiff, by their counsel, having filed briefs in opposition thereto, and all counsel including counsel for defendant Detroit Board of Education, having presented oral argument thereon; and the Court being fully advised in the premises; now, therefore, for the reasons more particularly set forth in the Opinion of the Court dated January 19, 1970, on motion of counsel for defendants;

IT IS ORDERED AND ADJUDGED, that plaintiffs by their complaint and amended complaint have failed to state a claim upon which relief can be granted; and

IT IS FURTHER ORDERED AND ADJUDGED that the agency shop clause in the current collective bargaining agreement between the defendant Detroit Board of Education and defendant Detroit Federation of Teachers is valid and of full force and effect according to its terms; and

IT IS FURTHER ORDERED AND ADJUDGED that the said agency shop clause does not contravene the Constitution of the United States or of the State of Michigan or the statutes of the State of Michigan, including the Public Employment Relations Act, the Michigan Teachers Tenure Act, Section 353, Chapter LI, Penal Code (M.S.A. §28.585), and the Michigan school laws.

By consent of defendants, no costs are taxed, a public question being involved.

/s/Charles Kaufman
Circuit Judge

A True Copy
Edgar M. Branigan
Clerk

Order of the Supreme Court
of the
State of Michigan
dated December 28, 1972

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHICAN, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of December in the year of our Lord one thousand nine hundred and seventy-two.

Present the Honorable
THOMAS M. KAVANAGH,
Chief Justice,
EUGENE F. BLACK,
PAUL L. ADAMS,
THOMAS E. BRENNAN,
THOMAS G. KAVANAGH,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
Associate Justices

WM 7-271

CHRISTINE WARCZAK, et al,
Plaintiffs-Appellants,
and
ROBERT J. JOHNSON, et al,
Intervening Plaintiffs-Appellants,

v 53141

DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al,
Defendants-Appellees.

On order of the Court (Black, J., not participating), leave to appeal is GRANTED. Pursuant to the decision in *Smigel et al*, Plaintiffs-Appellees v *Southgate Community School District et al*, Defendants-Appellants, Docket No. 53008, the summary judgment for the defendants entered in Wayne county circuit court on January 23, 1970, on order of Honorable Charles

Kaufman is hereby vacated and set aside and the cause is remanded to that court for further proceedings consonant herewith.

No costs. A public question.

STATE OF MICHIGAN – ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 29th day of December in the year of our Lord one thousand nine hundred and seventy-two.

/s/ Harold Hoag
Deputy Clerk

Summary Judgment of the Circuit Court for the County of Wayne, Michigan, dated December 5, 1973

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al., Plaintiffs, vs. THE BOARD OF EDUCATION OF THE CITY OF DETROIT, DETROIT FEDERATION OF TEACHERS, et al., Defendants. No. 145 080

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al., Plaintiffs, vs. DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al., Defendants. No. 155 255

SUMMARY JUDGMENT FOR DEFENDANTS, UPON REMAND

At a session of said Court held in the City-County Building in the City of Detroit, Michigan on December 5, 1973

PRESENT: HONORABLE CHARLES KAUFMAN, WAYNE CIRCUIT JUDGE.

These matters having come on to be heard on remand, following Order of the Michigan Supreme Court dated December 28, 1972 (in No. 145-080), on (1) motion of defendants for summary judgment in their behalf pursuant to GCR 1963, 117.2(1), for the reason that plaintiffs and added plaintiffs fail to state a claim upon which relief can be granted and (2) on plaintiffs' motion to suspend dues deductions, and the Court having heard arguments thereon, and having considered the briefs of counsel thereon, and the Court being fully advised in the premises, and having rendered its Opinion dated November 5, 1973, to which reference is made, now, therefore,

IT IS ORDERED AND ADJUDGED that 1973 PA 25 (immediately effective June 14, 1973), §§10(1)(c) Proviso and (2), specifically and validly, prospectively and retrospectively, authorizes agency shop agreements in public employment; and

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs, by their complaint and amended complaint, have failed to state a claim upon which relief can be granted; and

IT IS FURTHER ORDERED AND ADJUDGED that the agency shop clause in the collective bargaining agreement between the defendant Detroit Board of Education and defendant Detroit Federation of Teachers is valid and of full force and effect according to its terms; and

IT IS FURTHER ORDERED AND ADJUDGED that said agency shop clause does not contravene the

Constitution of the United States or of the State of Michigan or the statutes of the State of Michigan.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs' motion to suspend dues deductions is DENIED, for want of merit.

/s/Charles Kaufman
Wayne Circuit Judge

Approved as to form only:

/s/Charles E. Keller
Charles E. Keller

/s/Charles Fine
Charles Fine

A True Copy
Joseph B. Sullivan
Clerk

Order Denying Rehearing of the Circuit Court for the County of Wayne, Michigan

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al.,

Plaintiffs,

vs. No. 145 080

THE BOARD OF EDUCATION OF THE CITY OF DETROIT, DETROIT FEDERATION OF TEACHERS, et al.,

Defendants.

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al., No. 155 255

Plaintiffs,

vs. Hon. Charles Kaufman

DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al., P 15757

Defendants. Charles Keller (for plaintiff) P 15807

ORDER DENYING PLAINTIFFS' MOTION FOR REHEARING

At a session of said Court held in the City-County Building in the City of Detroit, Michigan on January 24, 1974

PRESENT: HONORABLE CHARLES KAUFMAN, WAYNE CIRCUIT JUDGE.

This matter having come on to be heard on January 4, 1974, on plaintiffs' Motion For Rehearing of the Order Denying Motion to Suspend Dues Deduction and Granting the Defendants' Motion For Summary Judgment; and the parties having filed briefs for and in opposition to said motion; and the parties having presented oral arguments thereon in open Court on the record; and the Court being fully advised in the premises and having indicated its reasons and decision on the record, now, therefore,

IT IS ORDERED that said Motion be and the same is hereby DENIED.

/s/Charles Kaufman
Wayne Circuit Judge

A True Copy
Joseph B. Sullivan
Clerk

Order Denying Rehearing of the Court of Appeals of the State of Michigan

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the 15th day of May in the year of our Lord one thousand nine hundred and seventy-five.

Present the Honorable
LOUIS D. McGREGOR,
Presiding Judge
JOHN H. GILLIS,
TIMOTHY C. QUINN,
Judges

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al,
Plaintiffs-Appellants
vs.
DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al,
Defendants-Appellees

No. 19465
L.C. No. 155 255

CHRISTINE WARCZAK, et al,
Plaintiffs-Appellants
vs.
DETROIT BOARD OF EDUCATION, et al,
Defendants-Appellees

No. 19523
L.C. No. 145 080

In this cause a motion for rehearing having been filed by appellants, and nothing in opposition thereto having been filed by appellees, and a motion for clarification

having been filed by appellees, and nothing in opposition thereto having been filed by appellants, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for rehearing and the motion for clarification shall be and the same are DENIED.

STATE OF MICHIGAN–ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 15th day of May in the year of our Lord one thousand nine hundred and seventy-five.

/s/ Ronald L. Dzierbicki
Clerk

Orders of the Supreme Court
of the
State of Michigan
dated September 17, 1975

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 17th day of September in the year of our Lord one thousand nine hundred and seventy-five.

Present the Honorable
THOMAS GILES KAVANAGH,
Chief Justice,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN
JOHN W. FITZGERALD,
LAWRENCE B. LINDEMER
Associate Justices

CR 15-83

D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al,
Plaintiffs-Appellants
and Cross-Appellees,
v 57151 COA 19465
DETROIT BOARD OF EDUCATION, DETROIT FEDERATION OF TEACHERS, et al,
Defendants-Appellees
and Cross-Appellants. LC 155 255

On order of the Court, the application for leave to appeal by plaintiffs-appellants is considered and the same is hereby DENIED because the appellants have failed to persuade the Court that the questions presented should be reviewed by this Court.

The application for leave to appeal by defendants-cross-appellants is also considered and the same is hereby DENIED because the cross-appellants have failed to persuade the Court that the questions presented should be reviewed by this Court.

Swainson, J., not participating.

STATE OF MICHIGAN ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 17th day of September in the year of our Lord one thousand nine hundred and seventy-five.
/s/ Calvin R. Davis
Deputy Clerk

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 17th day of September in the year of our Lord one thousand nine hundred and seventy-five.

Present the Honorable
THOMAS GILES KAVANAGH,
Chief Justice,
JOHN B. SWAINSON,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN
JOHN W. FITZGERALD,
LAWRENCE B. LINDEMER
Associate Justices

CR 15-83a

CHRISTINE WARCZAK,
ERNEST C. SMITH,
JUDITH KENNEDY,
AGNES STILLWELL, et al,
Plaintiffs-Appellants
and Cross Appellees,
v 57152 COA 19523
LC 145 080
THE BOARD OF
EDUCATION OF THE
CITY OF DETROIT,
DETROIT FEDERATION
OF TEACHERS, et al,
Defendants-Appellees
and Cross-Appellants.

On order of the Court, the application for leave to appeal by plaintiffs-appellants is considered and the same is hereby DENIED because the appellants have failed to persuade the Court that the questions presented should be reviewed by this Court.

The application for leave to appeal by defendants-cross-appellants is also considered and the same is hereby DENIED because the cross-appellants have failed to persuade the Court that the questions presented should be reviewed by this Court.

Swainson, J., not participating.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 17th day of September in the year of our Lord one thousand nine hundred and seventy-five.
/s/ Calvin R. Davis
Deputy Clerk

APPENDIX C

Notice of Appeal
Filed in the Circuit Court
for the
County of Wayne, Michigan,
on November 28, 1975

UNITED STATES OF AMERICA

IN THE SUPREME COURT

CHRISTINE WARCZAK, ERNEST C. SMITH, JUDITH KENNEDY, AGNES STILLWELL, et al., Plaintiffs-Appellants, vs. THE BOARD OF EDUCATION OF THE CITY OF DETROIT, DETROIT FEDERATION OF TEACHERS, et al., Defendants-Appellees.	Supreme Court No. 571 52 Court of Appeals No. 19523 Wayne County Circuit Court No. 145 080
D. LOUIS ABOOD, MARY ACETI, JOYCE C. ALEXANDER, et al., Plaintiffs-Appellants, vs. THE BOARD OF EDUCATION OF THE CITY OF DETROIT, DETROIT FEDERATION OF TEACHERS, et al., Defendants-Appellees.	Supreme Court No. 57151 Court of Appeals No. 19465 Wayne County Circuit Court No. 155 255

NOTICE OF APPEAL

Plaintiffs-Appellants in the above-referenced consolidated matter, Christine Warczak, et al., by and through their attorneys, Keller, Thoma, Toppin & Schwarze, P.C., hereby give notice to the Wayne County Circuit Court—the Court having possession of the record in this matter—of an appeal to the United States Supreme Court from the Order of the Michigan Supreme Court dated September 17, 1975 (denying Plaintiffs-Appellants' Application For Leave To Appeal) and from that portion of the Decision and Order of the Michigan Court of Appeals dated March 31, 1975 (from which Leave to Appeal was denied) which upheld the validity and constitutionality (on its face and as applied) of that portion of P.A. 1973 No. 25 providing for compulsory agency shop agreements in Michigan public employment. The Michigan Court of Appeals entered said Decision and Order when it reviewed the Opinion (dated November 5, 1973) and the Judgment (dated December 5, 1973) of the Wayne County Circuit Court in this matter.

The instant appeal to the United States Supreme Court is taken under 28 U.S.C. §1257(2), since (a) the above-referenced matter draws into question the validity under the United States Constitution of a portion of a Michigan statute (P.A. 1972 No. 25), and (b) the above-referenced Decision and Order of the Michigan Court of Appeals constitutes a final decree in favor of

the validity of the portion of said statute being challenged by the highest Court of the State of Michigan from which a Judgment could be had.

Respectfully submitted,
KELLER, THOMA, TOPPIN &
SCHWARZE, P.C.

By: /s/ David E. Kempner
David E. Kempner (P23329)
Attorneys for Plaintiffs-Appellants
1600 City National Bank Building
Detroit, Michigan 48226
(313) 965-7610

Dated: November 28, 1975